

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, Foley Square, in the City of New York, on the 9th day of August, two thousand and six.

PRESENT:

HON. DENNIS JACOBS,
HON. ROBERT D. SACK,
HON. RICHARD C. WESLEY,
Circuit Judges.

Yuguang Chen,

Petitioner,

v.

No. 05-5809-ag
NAC

Alberto R. Gonzales,

Respondent.

FOR PETITIONER: Kevin Long, Monterey Park, California.

FOR RESPONDENT: Because the Court did not receive a brief from the respondent within fifteen days of the April 27, 2006 due date specified in the scheduling order issued March 31, 2006, this case has been reviewed and decided without the benefit of a respondent's brief. See Local Rule § 0.29(d).

UPON DUE CONSIDERATION of this petition for review of a decision of the Board of Immigration Appeals ("BIA"), it is hereby ORDERED, ADJUDGED, AND DECREED, that the

1 petition for review is DENIED.

2 Yuguang Chen, through counsel, petitions for review of the BIA decision affirming
3 Immigration Judge (“IJ”) Philip Morace’s denial of his application for asylum, withholding of
4 removal, and relief under the Convention Against Torture (“CAT”). We assume the parties’
5 familiarity with the underlying facts and procedural history of the case.

6 Where, as here, the BIA summarily affirms the decision of the IJ without issuing an
7 opinion, *see* 8 C.F.R. § 1003.1(e)(4), this Court reviews the IJ’s decision as the final agency
8 determination. *See, e.g., Twum v. INS*, 411 F.3d 54, 58 (2d Cir. 2005); *Yu Sheng Zhang v. U.S.*
9 *Dep’t of Justice*, 362 F.3d 155, 158 (2d Cir. 2004). This Court reviews the agency’s factual
10 findings, including adverse credibility determinations, under the substantial evidence standard,
11 treating them as “conclusive unless any reasonable adjudicator would be compelled to conclude
12 to the contrary.” 8 U.S.C. § 1252(b)(4)(B); *see also, e.g., Zhou Yun Zhang v. INS*, 386 F.3d 66,
13 73 & n.7 (2d Cir. 2004). However, we will vacate and remand for new findings if the agency’s
14 reasoning or its fact-finding process was substantially flawed. *Cao He Lin v. U.S. Dep’t of*
15 *Justice*, 428 F.3d 395, 406 (2d Cir. 2005); *Tian-Yong Chen v. INS*, 359 F.3d 121, 129 (2d Cir.
16 2004); *see also Xiao Ji Chen v. U.S. Dep’t of Justice*, 434 F.3d 144, 158 (2d Cir. 2006) (agreeing
17 with this principle, but denying remand, in spite of deficiencies in an adverse credibility
18 determination, because it predicted with confidence that the IJ would adhere to its decision were
19 the case remanded).

20 Here, although the IJ’s findings regarding the reason for Chen’s suffering at the hands of
21 village officials and his characterization of Chen’s friend’s letter were directly contradicted by
22 evidence in the record, it can be confidently predicted that he would have concluded that Chen

1 failed to present a credible claim of past persecution or a well-founded fear of future persecution
2 despite those mischaracterizations. *See Xiao Ji Chen*, 434 F.3d at 161(holding that remand was
3 not required where “(1) substantial evidence supports the error-free findings that the IJ made, (2)
4 those findings adequately support the IJ's ultimate conclusion that petitioner lacked credibility,
5 and (3) despite errors -- considered in the context of the IJ's entire analysis -- we can state with
6 confidence that the IJ would adhere to his decision were the petition remanded.”). The IJ
7 appropriately relied on Chen’s demeanor, *Zhou Yun Zhang*, 386 F.3d at 73, implausible hearing
8 testimony, *Ming Xia Chen v. BIA*, 435 F.3d 141, 146 (2d Cir. 2006), inconsistencies between
9 submitted documentary evidence and oral hearing testimony, *Qyteza v. Gonzales*, 437 F.3d 224,
10 227 (2d Cir. 2006), and vague statements regarding his and his friend’s Falun Gong activities, *Jin*
11 *Shui Qiu v. Ashcroft*, 329 F.3d 140, 152 (2d Cir. 2003).

12 The IJ’s denial of asylum is thus substantially supported by the record as a whole.
13 Because the only evidence of a threat to Chen’s life or freedom depended upon his credibility, the
14 adverse credibility determination in this case necessarily precludes success on the claim for
15 withholding of removal. *See Wu Biao Chen v. INS*, 344 F.3d 272, 275 (2d Cir. 2003). Because
16 Chen did not challenge the IJ’s denial of CAT relief in his brief to this Court, any such arguments
17 have been waived. *Yueqing Zhang v. Gonzales*, 426 F.3d 540, 542 n.1, 546 n.7 (2d Cir. Oct.
18 2005).

19 _____ For the foregoing reasons, the petition for review is DENIED. Having completed our
20 review, any stay of removal that the Court previously granted in this petition is VACATED, and
21 any pending motion for a stay of removal in this petition is DENIED as moot. Any pending
22 request for oral argument in this petition is DENIED in accordance with Federal Rule of

Appellate Procedure 34(a)(2), and Second Circuit Local Rule 34(d)(1).

FOR THE COURT:
Roseann B. MacKechnie, Clerk

By: _____